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February 23, 2016

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 112th Street SW
Washington, DC 20554

RE: *WC Docket No. 15-1, Petition for Declaratory Ruling to Clarify That Technology Transitions Do Not Alter the Obligations of Incumbent Local Exchange Carriers to Provide DS1 and DS3 Unbundled Loops Pursuant to 47 U.S.C. §251(c)(3)*

Dear Ms. Dortch,

The Nebraska Public Service Commission (NPSC) respectfully files this letter in support of Windstream Corporation's (Windstream) request for a declaratory ruling to confirm the obligations of Incumbent Local Exchange Carrier's (ILEC) to provide DS1 and DS3 capacity loops on an unbundled basis pursuant to federal law and FCC rules remain unchanged. Windstream further is seeking clarification that FCC rules in this regard are technologically neutral and not altered due to the physical composition of the loop or type of traffic transmitted over the loop.¹

The NPSC has long been a strong advocate of competition in the telecommunications marketplace and desires to ensure competitive advances gained under the Telecommunications Act are not abrogated in the transition to IP networks. As you are aware, Competitive Local Exchange Carriers (CLECs) comprise a significant source of competition to ILEC provided services. CLECs utilize unbundled DS1 and DS3 capacity loops of the ILEC in the provision of that competitive service.

¹ *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, FCC 04-290, 20 FCC Rcd. 2533, 2536, ¶ 5 (2005) ("Triennial Review Remand Order" or "TRRO"). Pursuant to Commission rules implementing the unbundling provisions of the Telecommunications Act of 1996, in particular, specify that an ILEC must provide a requesting telecommunications carrier with nondiscriminatory access to: 1) a DS1 loop on an unbundled basis to any building (a maximum of 10 unbundled loops per single building) not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators; and, 2) a DS3 loop on an unbundled basis to any building not served by a wire center with at least 38,000 business lines and at least four fiber-based collocators. 47 C.F.R. § 51.319(a)(4), (5).

The NPSC shares the concerns of many pro-competition advocates with the comments from some parties surrounding the IP transition, including AT&T and Verizon, espousing the view that the obligations to unbundle under the Telecommunications Act are not applicable to ILECs if the loops are comprised of fiber and/or are transmitting IP traffic.² We find this position unsupported in the FCC's rules and orders which do not limit ILEC DS1 and DS3 capacity loop unbundling obligations to copper facilities or facilities supporting TDM-based services. Further, we see no reason these rules would cease to apply during and after the IP transition.

Any party arguing unbundling obligations are no longer applicable due to the IP transition have legal options available to show that the policy rationale underlying the unbundling rules has changed. An ILEC may seek the elimination of its obligations to provide unbundled DS1 and DS3 capacity loops by, (1) demonstrating the trigger contained in 47 C.F.R. § 51.319(a)(4) or (5) for a finding of non-impairment has been met, (2) obtaining a FCC ruling, by rulemaking, that impairment no longer exists, or (3) filing a petition for forbearance pursuant to 47 U.S.C. § 160, and meeting each relevant statutory requirement. Therefore, a remedy exists for ILECs without unilaterally interpreting legal requirements to no longer apply to the detriment of competition.

The NPSC is confident the FCC has no desire to return to a marketplace monopolized by a few ILEC carriers, devoid of meaningful competition and lacking any significant customer choice. Such an outcome would void 20 years' worth of work and undermine the hard won gains for competition. We therefore urge the FCC to issue a ruling confirming the ongoing unbundling obligations for ILECs during and after the IP transition. As Windstream pointed out in its petition, such a decision will not undermine the IP transition by requiring an ILEC to maintain copper or TDM-based technologies, but would instead affirm the ILEC obligation to provide DS1 and DS3 capacity, the format of such capacity would be entirely left to the ILEC.

Thank you for your time and attention to this matter and if you should have any questions regarding the NPSC's position on these issues, please do not hesitate to contact me.

Respectfully submitted,



Crystal Rhoades
District 2



Frank E. Landis
District 1

² See "Public Notice of Network Change Under Rule 51.333(a)" for Midlothian, VA, *available at* <http://www.verizon.com/about/networkdisclosures/> (last visited Mar. 6, 2015). See also Short Term Public Notice Under Rule 51.333(A) for Orchard Park, NY, Hummelstown, PA, Farmingdale, NJ, Lynnfield, MA, and Belle Harbor, NY; Letter from Robert C. Barber, AT&T, to Marlene H. Dortch, FCC, GN Docket No. 13-5, *et al.*, attachment at 11 (filed May 30, 2014); Reply to Comments of AT&T Services, Inc., GN Docket Nos. 13-5, 12-353, at 40-41 (filed Apr. 10, 2014).



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